No. 11,623

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

GEORGE GARTNER, an Insane Person, and MIKE ERCEG, Guardian of the Estate of George Gartner, an Insane Person,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANTS' REPLY BRIEF.

JOHN L. McGINN,
COLLINS & CLASBY,
540 Second Avenue, Fairbanks, Alaska,
Attorneys for Appellants.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

Subject Index

Table of Authorities Cited

Cases

Statutes

Texts

No. 11,623

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

GEORGE GARTNER, an Insane Person, and MIKE ERCEG, Guardian of the Estate of George Gartner, an Insane Person,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANTS' REPLY BRIEF.

TERRITORIAL STATUTE OF ALASKA NOT A FEDERAL STATUTE.

Appellee admits that its right to recover in this action is founded upon the common law of Alaska. (Appellee's Br. 11.) Appellee also admits that there is "no common law of the United States as distinguished from the individual States." (Appellee Br. 15.) Appellee does not controvert, but tacitly admits, "that before any right can prevail in favor of the National Government it must rest exclusively upon a Federal Statute." (Appellee's Br. 11.)

Appellee, however, undertakes to obviate the consequences of these admissions by attempting to ingraft

into the Federal Statutory System, Section 796 of the Compiled Laws of Alaska, 1913, which provides:

> "So much of the common law as is applicable and not inconsistent with the Constitution of the United States or with any law passed or to be passed by the Congress is *adopted and declared to be the law within the District of Alaska.*" (Emphasis ours.)

This attempted transformation of a local Territorial law into a Federal law is not only contrary to the rule that "the common law can be made a part of the Federal System only by legislative adoption," (Opening Br. 13) but is also in conflict with the authorities.

In *Ex parte Krause,* 228 Fed. 547, the issue presented was whether the petitioner, in a habeas corpus proceeding, should be removed from the Western District of Washington, Northern Division, upon a complaint filed by the United States District Attorney, charging the petitioner with the commission of a crime within the Territory of Alaska, in violation of Section 1907 of the *Compiled Laws of the Territory of Alaska, codified and arranged by the Act of Congress of August 24, 1912.* (See Opening Br. 36, 37.)

The legal issue involved was presented by the allegation of the petition *"that, if a crime was committed, it was not an offense against the United States, but an offense against the Territory of Alaska".*

Neterer, District Judge, in his opinion said (550):

> "Sect. 410, Comp. Laws, Alaska, 1913 (Act August 24, 1912, c. 387, Sec. 3, 37 Stat. 512), provides that all laws of the United States heretofore

passed, establishing the executive and judicial departments in Alaska, shall continue in full force and effect until amended or repealed by Act of Congress; that, except as therein provided, all laws in force in Alaska shall continue in full force and effect until altered, amended, or repealed by Congress or by the territorial Legislature; that the authority granted to the Legislature to alter, amend, modify, or repeal laws in force in Alaska shall not extend to the customs, internal revenue, postal, or other general laws of the United States.

There is, by this provision, clearly a line of demarcation placed by Congress between the local laws affecting the territory and the laws affecting generally all, of the states and territories. Section 2099, of the Laws of Alaska, supra, provide:

That: 'the common law of England as adopted and understood in the United States shall be in force in said district, except as modified by this act'.

This expression, I think, further emphasizes the line of demarcation suggested, as *it is fundamental that federal courts have no jurisdiction of common-law offenses, but are limited to acts made criminal by Congress, and Congress is charged with knowledge of this fact.* The common-law offenses by this provision are placed in the same category and relation as the offenses defined by the criminal code, and it would hardly be contended that this court would have jurisdiction to direct the removal of an offender against the common law of the territory.

The offense charged, kidnapping, is not an offense under any law of the United States to

which my attention has been directed, or one cognizable by the United States courts as such, *unless the adoption of the Alaska code by Congress makes this an offense against the United States. Congress, in passing this law, exercised its power as a local capitol legislature rather than in its power as a general government of the United States,* Allen v. Meyers, 1 Alaska 114. The intention of Congress undoubtedly was to constitute the 'Alaska Criminal Code,' taken largely from the Oregon Criminal Code, which was extended to Alaska in 1884, a territorial act, as distinguished from the laws of the United States. Jackson v. United States, 102 Fed. 478, 42 C.C.A. 452; United States v. Pridgeon, 153 U. S. 48, 14 Sup. Ct. 746, 38 L. Ed. 631.

The Compiled Laws of Alaska have no greater force than a law enacted by a territorial Legislature, subject to congressional approval, *and as such its provisions are not laws of the United States and do not come within the cognizance of the United States courts.* Maxwell v. Federal Gold & Copper Co., 155 Fed. 111, 83 C.C.A. 570; In re Moran, 203 U. S. 96, 51 L. Ed. 105; United States v. Jones, Adms., 236 U. S. 106, 59 L. Ed. 488. Chief Justice Marshall, in United States v. Burr (No. 14,694) 25 Fed. Cas. 188, says: 'No man can be condemned * * * in the Federal Courts on a State law.' " (Emphasis ours.)

We have emphasized the language of the Court "that it is fundamental that the federal courts have no jurisdiction of common law offenses, but are limited to acts made criminal by congress, and that congress is charged with the knowledge of this fact" as

it refutes the reasoning of appellee's brief under the heading "The United States may maintain this action for reimbursement under the Common Law rule made applicable to Alaska by Congress." (Appellee's Br. 15.)

It is clear from the foregoing authorities that the Territorial statute is not a Federal law of the United States and that when Congress passed the Act of April 28, 1904, providing that:

> "the cost of * * * caring for the insane to be paid from appropriations to be made for such service upon estimates to be submitted to Congress annually" (Opening Br. 33)

it was charged with knowledge that:

> "As the Federal Government does not have a customary common law of its own, distinct from the states themselves, it necessarily results that the right itself must depend exclusively upon a federal statute." (Opening Br. 24.)

COMMON LAW OF ALASKA—WHAT EMBRACED IN.

Before considering the various contentions of appellee we desire to point out, that,

The Common Law adopted in Alaska by Sections 367 (Act of June 6, 1900, C. 781, 31 Stat. 552) of the Code of Civil Procedure, and 218 of the Criminal Code (Act of March 3, 1899, C. 429, 30 Stat. 1285) is that body of law described by the Supreme Court of the United States,

"in Patterson v. Winn, 5 Pet. 241, 8 L. Ed. 108, as follows:

'The term "common law" means both the common law of England, as opposed to the written or statute law, and the statute passed before the immigration of the first settlers to America'.

This latter definition, furnished by the Court of last resort for Alaska, would seem to be the one that should control this in its application of the common law to the case at bar."

Valentine v. Roberts, 1 Alaska 536, 541.

NO RIGHT TO REIMBURSEMENT AT COMMON LAW.

The number one headline of appellee's brief is, that, "At Common Law the Sovereign was entitled to reimbursement from the estate for the public monies spent in the care of an insane person." (Appellee's Br. 4.)

In support of this conclusion, appellee contends:

First. That by the Common Law of England it is the duty of the King to take care of all of his subjects who, by reason of their imbecility and want of understanding, are incapable of taking care of themselves."

Second. That the law implies an obligation on the part of the lunatic, or his estate, to reimburse public authorties who have supplied his necessaries.

KING'S DUTY AS TO IDIOTS AND LUNATICS.

The language of appellee's first contention, as above set forth, is a quotation from the opinion of the Supreme Court of Vermont in *State v. Ikey's Estate,* 84 Vt. 363, 79 A. 850, and is dictum pure and unadulterated.

The issue determined, in the case (quoting from syllabus) was that:

> "The after acquired property of an insane person, committed as a public charge, is liable for his support and maintenance under the Acts Vt. 1890, No. 20, providing that whenever any insane person, supported by the state, shall, after his commitment, possess any estate, it shall be appropriated for his support, and Acts 1906, No. 105, Secs. 4, 5, respectively, providing that the cost of maintaining insane poor, shall be ascertained by the auditor and that it shall be collected out of any estate such insane person may have at his death and that the statute of limitations shall not apply to these claims."

We have no fault to find with the determination of the Court upon points required to be decided to reach a final judgment. But we submit that the case is not authority upon points not necessary to its determination. The liability sought to be enforced rested entirely upon the Vermont Statutes; and the question as to whether or not by the Common Law of England it was the duty of the King to take care of insane persons was not involved in any way. The opinion of the Court upon this point was "a gratuitous opinion that bindeth none; * * * not even the lips that utter it."

Furthermore, the dictum is not well-considered dictum, as is evidenced by the fact that the legal-historic authorities cited and quoted to support it—in reality belie it.

The same is also true of the dictum of the Court, that:

> "It is manifest from the statutory regulations in this respect that *the policy of the state is as at common law,* that the estates of such wards shall be appropriated to their proper maintenance, before they can be supported at the expense of the state."

The unsoundness of this dictum most forceably presents itself, because of the fact that immediately preceding it, the Court points out that:

> "Pollock and Maitland in their history of the English Law (vol. 1, p. 464) say this document known as Praerogativa Regis seems to be the oldest that gives any clear information about the wardship of lunatics. 'The king is to provide that the lunatic and his family are properly maintained out of the income of his estate, and the residue of it is to be handed over to him upon his restoration to sanity, or should he die without having recovered his wits, is to be administered by the ordinary for the good of his soul; but the king is to take nothing to his own use.' Bac. Abr. tit. Idiots and Lunatics, C."

This quotation from Bacon's Abridgment contains the very pith and substance of the common law, in so far as it relates to the king's duty to provide for the maintenance of lunatics and their families. And it

shows, conclusively, that *it was not the policy of the common law, as stated by the Vermont Court, to appropriate the estates of lunatics to their proper maintenance, but that on the contrary it was the explicit policy of the common law, so declared by statute, "that lunatics shall be properly maintained out of the profits of his estate"*; and, also, "that their lands and tenements shall be safely kept without waste or destruction * * * to be delivered to them when they come to right mind" (Opening Br. 12.)

Singularly, appellee, in quoting from the opinion in the *Ikey's Estate* case, *asterisked* the above quotation from Bacon's Abridgment.

AT COMMON LAW NEITHER STATES NOR MUNICIPALITIES WERE CHARGED WITH THE DUTY TO SUPPORT INSANE PAUPERS OR INCOMPETENTS.

The asylum treatment of the insane was unknown in England, until the middle of the 19th century. It was not until then that the conscience of the people awoke, and there began to be made available for the insane, asylums specially constructed for their isolation and treatment. We have set forth in the appendix an excerpt from Enc. Britannica, vol. 12 (1942), p. 389, that graphically portrays the barbaric treatment of the insane that prevailed in Europe until the middle of the 19th century; and which shows that up until that time there was no special provision provided by the Sovereign for their care or maintenance, and that they were provided for by the poor laws, and in many instances treated as criminals.

In 44 C. J. S. 177, sec. 75, it is said:

> "At common law, states and municipalities were not charged with the duty of supporting insane or incompetent persons. The liability for supporting such persons, however, may be, and often is, imposed by statute on various public authorities on certain conditions. This liability being statutory, the particular public authorities can be held liable in no case and in no other manner except as prescribed by statute."

See, also,

28 *Am. Jur.* 683, Sec. 43.

In *State Department of Public Welfare v. Shively,* 243 Wis. 276, 10 N.W. (2d) 215, it was held that, at common law, states and municipalities were not charged with the duty to support poor, insane or incompetent persons, and that the duty of municipalities and states in such respects is wholly statutory. The Court in its opinion, said (220, 221):

> "Counsel argues that an action may be maintained under the common law for necessaries furnished a person in need against relatives charged with support and that the right of the State in that regard is the same as that of an individual. *It is true that an individual may maintain such an action* but that fact does not sustain counsel's position in this case. There are no common law precedents for plaintiff's position for the reason that at *common law states and municipalities were not charged with the duty of supporting poor, insane or incompetent* persons. The duty of municipalities and states in this respect is wholly statutory. Patrick v. Town of Baldwin

(1901), 109 Wis. 342, 85 N.W. 274, 53 L.R.A. 613. See Coffien v. Town of Prible, 142 Wis. 183, 125 N.W. 954, 27 L.R.A. N.S. 1079."

"The care of the state for its dependent class is considered by all enlightened people as a measure of its civilization, and the case of the poor is generally recognized as among the unquestioned objects of public duty, but in spite of this, the duty under the common law was purely moral and not legal."

21 *R. C. L.* 701, Sec. 2;

Patrick v. Baldwin, 109 Wis. 342, 85 N.W. 274, 53 L.R.A. 613;

48 *C. J.* 432, 520, Sec. 202.

"There is therefore no legal obligation at common law on any of the instrumentalities of government to furnish relief to paupers. The obligation to support such persons results only from Statute."

41 *Am. Jur.* 681, Sec. 2.

"The reason for this seeming barbarity of the common law was that matters of charity were thought to be more appropriate for the church and by parishioners, so that none of them die for want of sustenance".

21 *R. C. L.* 701, Sec. 2.

The lower Court in its opinion (R. 9) states, that, "a distinction between poor persons and insane persons is made not only at common law, but in modern statutes." This is true as to modern statutes, but is not true at common law, except as to lunatics pos-

sessed of estates, as is clearly shown, by the foregoing citations.

It is manifest from the foregoing, that at common law there was no duty imposed upon the sovereign to provide for the care and maintenance of lunatics or paupers. The poor—including idiots and lunatics without estate—were dependent entirely upon religious charitable benevolence. Idiots and lunatics possessed of estates were the wards of the king, by virtue of his prerogative. The king, as guardian, had the duty of maintaining competently his wards and their households out of the profits of the estate. The king was no more obligated to furnish maintenance for his ward out of his own pocket or from public funds, than a statutory guardian, in Alaska or in California, is required to use his funds for the maintenance of his ward. In view of this fact, we are unable to understand how there could be any *"reimbursement of public funds"*, when in the nature of things, there could be no public funds legally expended.

THE SECOND CONTENTION OF APPELLEE IS, THAT: THE LAW IMPLIES AN OBLIGATION ON THE PART OF THE LUNATIC, OR HIS ESTATE, TO REIMBURSE PUBLIC AUTHORITIES WHO HAVE SUPPLIED HIS NECESSARIES.

From motives of public policy and benevolence, the United States, as *parens patriae* for Alaska, has appropriated funds annually ever since 1906, for the care and maintenance of the legally adjudged insane of Alaska, as a part of the *"Civil Expense of Govern-*

ment". There is no Federal law that makes the individual beneficiaries of this fund liable to the United States for the necessaries furnished them under the acts of Congress. The government now seeks, however, to have appellant Gartner declared a debtor for the necessaries furnished him, on the basis of a promise implied by law—a quasi-contract.

> "Contracts implied in law, or more properly quasi or constructive contracts, are a class of obligations which are imposed or created by law, without regard to the assent of the party bound, on the ground that they are dictated by reasons of justice and which are allowed to be enforced by an action ex contractu. They rest entirely on a legal fiction and are not contract obligations at all in the true sense, for there is no agreement; but they are clothed with the semblance of contracts for the purpose of the remedy. * * * Among the instances of quasi or constructive contracts are those * * * cases in *which an obligation to pay money is imposed by a statute."*
>
> 17 *C. J. S.* 322-325, Sec. 6.

In most of the States, statutes have been enacted making an insane person and his estate liable for his maintenance in State or County hospitals. It is upon the decisions of the Courts of some of these states, construing these statutes, that appellee relies to sustain his contention of an implied contract. In all of these States the common law is in force.

In all of the cases, cited by appellee, the legislatures of the States imposed a duty upon the State, County or Municipality, to provide for the care of

the insane; and also imposed upon the insane person and his estate, the obligation to pay for the cost of his maintenance. In none, of the cases cited, was the question as to what was the rule at common law, directly or indirectly, involved. Some, of the cases cited, deal entirely with the constitutionality of such laws. Others contain dicta that *dogmatically* assert that the obligation to pay exists at common law; but none except *State v. Ikey's Estate,* supra, consider what the rule at common law was. Within the limits of this brief, we cannot consider these cases in detail. We are able to state, however, that they fully support the statement in 32 *C. J.* 687, Sec. 373, that:

> "While there is some dicta to the effect that, under the common law, the estate of a lunatic was liable for his maintenance at public expense, the statutes conferring the right on public authorities to sue being merely declaratory of the common law and providing a remedy for the collection of an existing debt, it is generally held *that at common law and in the absence of express contract or deception as to the ability to support himself, the public authorities may not recover from the lunatic or his estate the expenses incurred on his account,* * * *". (Emphasis ours.)

It is the statute that creates the implied promise to pay—the quasi contract. Congress has not imposed any such obligation, either by Federal or Territorial law, upon the insane of Alaska to pay for their care at Morningside. Without such a statutory duty being imposed there can be no contract implied by law.

28 *Am. Jur.* 683, Sec. 43.

> "A quasi contract arises where the law imposes a duty upon a person not because of any expressed or implied promise on his part to perform it but even in spite of any intention he may have to the contrary. To the same effect is Comment (a) to the restatement of contracts 5, that: 'Implied contracts must be distinguished from quasi contracts, which also have often been called implied contracts or contracts implied in law. Quasi contracts, unlike true contracts are not based on the apparent intention of the parties to undertake the performances in question nor are they promises. *They are obligations created by law for reasons of justice.*'" (Emphasis ours.)
>
> *American La France F. E. Co. v. Borough of Shenandoah,* 115 F. (2d) 866.

We ask, what law has created the implied promise in this action? *There is no Federal statute and there is no common law of the United States.*

And in this connection we desire to point out the failure of appellee to refer in any way to the decision of this Court in *Brown v. American Bonding Co.,* 210 Fed. 844 (Opening Br. 16, 17), in which this Court held, that the adoption of the common law, by a state, did not carry with it the prerogatives of the king.

Also appellee's complete failure to answer our contention (Opening Br. 24-33) that when the common law was adopted for Alaska by the act of June 6, 1900, the Oregon laws, that were in force in Alaska at the time, wholly and completely covered the entire subject of the care and maintenance of the in-

sane, and that by reason thereof, the common law relating to idiots and lunatics was never enforced there.

TERRITORIAL LAW IMPOSING DUTIES ON GUARDIANS OF PERSONS ARE LOCAL AND CONFER NO RIGHTS UPON THE UNITED STATES.

Appellee, in its brief 23, asks, that if Congress intended the funds appropriated for the care of insane to be a gratuity or charity, why did it provide in secs. 902 and 903 of the Act of June 6, 1900, that it is the duty of a guardian of the person to apply the income and profits, and if necessary the principal, to the debts and to the comfort and maintenance of his ward.

These sections were a part of the Laws of Oregon that were adopted for Alaska, by the Act of Congress of May 17, 1884, and when Congress by the Act of June 6, 1900, reenacted the provisions of the Oregon code it merely continued these sections in force.

These statutes were in force in Oregon for many years prior to May 17, 1884. The legislature of Oregon was evidently of the opinion, however, that the cost of the care of an insane person, in the State Asylum, was not a "just debt" within the meaning of the statute—otherwise, why did the Oregon legislature deem it necessary to provide, by the Act of October 18, 1878, that when an

> "insane person committed under this act shall be found to own any estate, real or personal, said judge shall immediately, without petition or notice, appoint a *guardian for the estate of such*

> *person,* who shall execute his trust under the direction of said court, * * * and *said estate shall be liable to the county for the cost of such commitment, and to the state for the cost of conveying such insane or idiotic person to the asylum and keeping him while there.''* (Opening Br. 27.)

Furthermore, these sections 902 and 903, and also section 918, of the Act of June 6, 1900 (C.L.A. 1933, sec. 4546) are limited to guardians of wards, and do not include guardians of the estates of insane persons. Erceg's guardianship is limited to the estate of Gartner.

These laws are local municipal laws for the government of the people of Alaska and they do not confer on the United States the right to charge for the care of insane persons committed under its direction at Morningside or elsewhere.

APPELLEE'S CONTENTION AS TO HASKINS' TESTIMONY.

Appellee contends that the per capita contract price agreed to by the United States and the Sanitarium Company, for the care of the insane of Alaska, is evidence of the reasonable cost of the care and maintenance of Gartner at Morningside, and that the contract price was properly admitted in evidence.

Counsel for the government in making this contention, has overlooked one of the most important maxims of evidence, viz.: *Res inter alios acta alteri nocere non debet,* that prevents a litigant party from being

concluded or even affected, by the evidence, acts, conduct, or declarations of strangers. The literal translation of this maxim is "A transaction between two parties ought not to operate to the disadvantage of a third."

Brooms, Legal Maxims 858;
24 *C. J.* 741.

Under this rule Gartner could not be *"concluded"* by the contract price entered into between the United States and the Sanitarium Company, nor was it admissible against him for any purpose. It may be that a contract price agreed to by the parties to an action may be some evidence of reasonable value. But that is not the question here. Here appellee is seeking to recover for *necessaries furnished in the total sum of $9,180.11,* and has failed to show the items that go to make up that amount or their reasonable cost. The general rule is that where the estate is liable for necessaries furnished the ward, that "the recovery is limited to the actual amount expended with interest. The reasonableness of the claim is a question for the Court and jury after hearing and considering the evidence.

32 *C. J.* 710, Sec. 441.

In determining what are necessaries for an insane person, so as to render him liable therefor, substantially the same rules apply as in the case of infants. It is whatever is reasonably necessary, for his support, maintenance, care and comfort according to his condition in life.

32 *C. J.* 740, Sec. 525.

"The question as to what are necessaries is a mixed one of law and fact. Whether articles are of those classes for which an infant shall be bound to pay is a matter of law for the court; if they fall under these general descriptions, then whether they were actually necessaries and suitable to the condition and state of the infant is a question of fact for the jury."

43 *C. J. S.* 337, Sec. 119.

OPINION OF HASKINS INVADES PROVINCE OF COURT AND JURY.

In this action the witness Haskins has usurped the function of both the Court and Jury. The ultimate issue to be determined in this case as set forth in the complaint is "the reasonable cost of the care and maintenance of said defendant", at Morningside. (R. 4.)

There was no testimony introduced as to the items of necessaries furnished, their kind, quantity, or quality or reasonable cost.

The witness Haskins in response to the question:

"Q. Now, Dr. Haskins, I would like to have you state to the jury what, in your opinion, was the reasonable value of the care and maintenance provided Mr. George Gartner at Morningside Hospital, on a monthly basis, per month during 1927?" answered:

"About $52.00 a month." (R. 42, 43.)

This question was repeated for each year from 1928 to 1942, inclusive, and all were answered over objections. (R. 43, 44.)

These questions and answers involved the determination of questions of law and fact, and invaded the province of both the Court and Jury. It allowed the witness to adjudge the question of what are necessaries; and took from the jury the right to determine whether the necessaries were actually necessary and suitable for the care and maintenance of Gartner and also their right to determine their reasonable cost. This was highly improper, and the language of the Supreme Court of the United States, in *United States v. Spalding,* 293 U. S. 498, 505, 79 L. Ed. 617, 623, is apropos. It is as follows:

> "Moreover, that question is not to be resolved by opinion evidence. It was the ultimate issue to be decided by the jury upon all the evidence in obedience to the judge's instructions as to the meaning of the crucial phrase and other questions of law. The experts ought not to have been asked or allowed to state their conclusions on the whole case." (Citing cases.)

In answer to the contention of appellee (Br. 31) that the Court did not err in directing a verdict on the uncontradicted evidence of Dr. Haskins, we will quote from *The Conqueror,* 166 U. S. 110, 133, 41 L. Ed. 947, as follows:

> "In short, as stated by a recent writer upon expert testimony, the ultimate weight to be given

> to the testimony of experts is a question to be determined by the jury; and there is no rule of law which requires them to surrender their judgment, or to give a controlling influence to the opinion of scientific witnesses. Rogers, Expert Testimony, sec. 207 * * *'' (Citing cases.)

We respectfully submit that the judgment should be reversed, with a direction that the action be dismissed.

Dated, Fairbanks, Alaska,
November 17, 1947.

Respectfully submitted,
JOHN L. MCGINN,
COLLINS & CLASBY,
Attorneys for Appellants.

(Appendix Follows.)

Appendix.

Appendix

Hospital Treatment of Insanity.

"The era of real hospitals for the insane may be said to have begun in the 19th century, although there have been established here and there in different parts of the world certain asylums or places of restraint before this period. The prevailing idea of the pathology of insanity in Europe during the middle ages was that of demoniacal possession. The insane were not sick, but possessed of devils, and these devils were only to be exorcised by moral and spiritual agencies. Mediaeval therapeutics in insantiy adapted itself to the etiology of that period. Torture and the cruelist forms of punishment were employed. The insane were regarded with abhorrence, and were frequently cast into chains and dungeons.

Until as late as the middle of the 18th century, mildly insane persons were cared for in shrines, or wandered homeless about the country. Such as were deemed a menace to the community were sent to ordinary prisons or chained in dungeons. Thus large numbers of lunatics accumulated in the prisons, and slowly there grew up a sort of distinction between them and criminals, which at length resulted in a separation of the two classes. In time many of the insane were sent to cloisters and monasteries, especially after these began to be abandoned by their former occupants. Thus "Bedlam" (Bethelem Royal Hospital) was originally founded in 1242 as a priory for the bretheren and sisters of Order of the Star of Bethle-

hem, and was rebuilt as an asylum for the insane in 1676.

Pinel, in 1792, struck the chains from the lunatics huddled in the Salpetriere and Bicetre of Paris, and called upon the world to realize the horrible injustice done to this wretched and suffering class of humanity; but 25 years later, the insane, every where in Europe, were still treated with brutality, and it was not until 1938 that in France they were all transferred from small houses of detention, work houses and prisons, to asylums specially constructed for this purpose.

No great advance in the humane and scientific care of the insane was made until the middle of the 19th century.''

Enc. Britannica, Vol. 12 (1942), 389.